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City of San Diego Ethics Commission  
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5 Petitioner

6  
7 **BEFORE THE CITY OF SAN DIEGO**  
8 **ETHICS COMMISSION**  
9

10 In re the Matter of: ) Case No.: 2006-12  
11 )  
CYNTHIA MORGAN, ) **STIPULATION, DECISION AND**  
12 ) **ORDER**  
Respondent. )  
13 )  
\_\_\_\_\_ )

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

16 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego  
17 Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to  
18 administer, implement, and enforce local governmental ethics laws contained in the San Diego  
19 Municipal Code [SDMC] relating to, among other things, the provisions of the City's Municipal  
20 Lobbying Ordinance.

21 2. At all times mentioned herein, Respondent Cynthia Morgan [Respondent] was an  
22 attorney employed by the law firm of Seltzer Caplan McMahon Vitek.

23 3. This Stipulation, Decision and Order [Stipulation] will be submitted for  
24 consideration by the Ethics Commission at its next scheduled meeting, and the agreements  
25 contained herein are contingent upon the approval of the Stipulation and the accompanying  
26 Decision and Order by the Ethics Commission.

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1           4.     This Stipulation resolves all factual and legal issues raised in this matter by the  
2 Ethics Commission without the necessity of holding an administrative hearing to determine the  
3 Respondent's liability.

4           5.     Respondent understands and knowingly and voluntarily waives any and all  
5 procedural rights under the SDMC, including, but not limited to, a determination of probable  
6 cause, the issuance and receipt of an administrative complaint, the right to appear personally in  
7 any administrative hearing held in this matter, the right to confront and cross-examine witnesses  
8 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to  
9 have the Ethics Commission or a volunteer hearing officer hear this matter. Respondent agrees  
10 to hold the City of San Diego harmless from any and all claims or damages resulting from the  
11 Commission's investigation or this stipulated agreement, or any matter reasonably related  
12 thereto. Respondent further agrees that the terms of this Stipulation constitute compliance with  
13 the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a  
14 reference to each violation, and an order.

15           6.     The Respondent acknowledges that this Stipulation is not binding upon any other  
16 law enforcement or government agency and does not preclude the Ethics Commission from  
17 cooperating with or assisting any other law enforcement or government agency with regard to  
18 this or any other related matter.

19           7.     The parties agree that in the event the Ethics Commission refuses to accept this  
20 Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics  
21 Commission rejects the Stipulation and a full evidentiary hearing before the City Ethics  
22 Commission becomes necessary, no member of the Ethics Commission or its staff shall be  
23 disqualified because of prior consideration of this Stipulation.

24                           **Summary of Law and Allegations**

25           8.     In October of 2005, Respondent was retained by Suzanne Angeluci on behalf of the  
26 Pacific Beach Concerned Citizens Coalition [PBCCC] for the purpose of opposing the proposed  
27 relocation of the Volunteers of America [VOA] Rehabilitation Center from the downtown area to  
28 the Pacific Beach area. The VOA facility provides drug and alcohol treatment on a long- and

1 short-term basis. It also serves as a four hour “sobering center,” commonly referred to as a  
2 “drunk tank,” for inebriated individuals delivered to the facility by law enforcement officers to  
3 sleep off the effects of alcohol consumption. In October of 2005, the lease for the VOA  
4 downtown facility was due to expire, and the proposed relocation involved the conversion of two  
5 existing buildings in Pacific Beach. The relocation required approval of a coastal development  
6 permit, a planned development permit, and a conditional use permit.

7 9. Ms. Angelucci is the owner of Mission Bay Center, a mixed-use commercial project  
8 located in close proximity to the proposed VOA site in Pacific Beach. Although Respondent was  
9 retained to represent PBCCC, ninety-seven percent of the funding for Respondent’s services  
10 came from two sources: Mission Bay Center paid thirty-nine percent, and Shawn Evans, a  
11 physician who resides in the Pacific Beach area, paid fifty-eight percent of Respondent’s bills.  
12 The remaining three percent of Respondent’s bills were paid by seven different individuals who  
13 reside in the Pacific Beach area.

14 10. PBCCC is an organization created for the purpose of opposing the relocation of the  
15 VOA facility. Both Respondent and her clients, Mission Bay Center and Dr. Evans, deny any  
16 role in the formation of PBCCC. Instead, Ms. Angelucci maintains that PBCCC “formed itself,”  
17 and she describes it as “not a real body.” Respondent acknowledges that all of her client contacts  
18 were with Ms. Angelucci and Dr. Evans, and that she is not familiar with all the other members  
19 of PBCCC. There is no record of any formal organization of PBCCC (e.g. articles of  
20 incorporation), nor is there any membership roster or any record of membership meetings.

21 11. During the fourth quarter of 2005, Respondent, on behalf of her clients, spent 86.6  
22 hours on lobbying and related activities in an effort to discourage elected officials from  
23 approving the proposed relocation of the VOA facility to Pacific Beach. During this time period,  
24 Respondent lobbied a variety of City Officials, including City Councilmembers and the City  
25 Attorney. Respondent’s lobbying contacts occurred in the form of meetings, telephone calls,  
26 emails, and letters, and each was made in an effort to influence the municipal decision  
27 concerning the VOA facility.

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1           12. Although the VOA matter was originally scheduled to be considered by the City  
2 Council in November of 2005, it was delayed until February of 2006 because the Pacific Beach  
3 area was not represented by a Councilmember until the District 2 special runoff election took  
4 place on January 10, 2006. The matter was ultimately heard by the City Council on February 7,  
5 2006, at which time the City Council voted to deny the permits requested by VOA to convert the  
6 existing structures and relocate the VOA Rehabilitation Center to Pacific Beach.

7           13. As compensation for Respondent's lobbying efforts during the fourth quarter of  
8 2005, Mission Bay Center, Dr. Evans, and several additional individuals paid Respondent's  
9 employer, Seltzer Caplan McMahon Vitek, for Respondent's services. Respondent, as an  
10 employee of Seltzer Caplan McMahon Vitek, personally earned more than \$2,542 during the  
11 fourth quarter of 2005 in connection with her work on the VOA matter (as discussed in greater  
12 detail below, \$2,542 was the registration threshold in 2005).

13           14. The City's Municipal Lobbying Ordinance requires lobbyists to register with the  
14 City Clerk within ten days of qualifying as a lobbyist. Qualification is based on the receipt of a  
15 threshold level of compensation for lobbying and related activities. The registration threshold in  
16 2005 was \$2,542 per calendar quarter. The Lobbying Ordinance requires registered lobbyists to  
17 file quarterly disclosure reports no later than the last day of the months of April, July, October,  
18 and January. SDMC §§ 27.4007, 27.4015, and 27.4016. The registration form must include the  
19 following for each of the lobbyist's clients: name, address, and telephone number; a description  
20 of the client's business; and the specific municipal decision or the types of municipal decisions  
21 for which the lobbyist was retained to represent the client. SDMC § 27.4009. Similarly, the  
22 quarterly disclosure reports must include the name, address, and telephone number of each client  
23 represented during the reporting period. SDMC § 27.4017. The definition of "client" set forth in  
24 the ordinance includes a person who compensates a lobbyist for the purpose of influencing a  
25 municipal decision. SDMC § 27.4002.

26           15. Based on her hourly rate of compensation from Seltzer Caplan McMahon Vitek and  
27 the amount of time she spent on lobbying and related activities during the fourth quarter of 2005,  
28 Respondent became entitled to receive the threshold level of compensation on November 15,

2005. Accordingly, she was required to register as a lobbyist on or before November 25, 2005. In addition, Respondent was required to file a quarterly disclosure report covering her lobbying activities during the fourth quarter of 2005 on or before January 31, 2006. Respondent did not register as a lobbyist and file a quarterly disclosure report for the fourth quarter of 2005 until August 2, 2006, after she was contacted by the Ethics Commission staff.

16. The registration form and quarterly disclosure report ultimately filed by Respondent identify her client as the "Pacific Beach Concerned Citizens Coalition." As discussed above, the Commission's investigation reveals that the primary sources of funding for Respondent's lobbying activities were Mission Bay Center and Dr. Shawn Evans. The address and telephone number provided by Respondent for PBCCC belong to Suba Corporation, a property management company located in Solana Beach that is owned and operated by Suzanne Angelucci.

### **Counts**

#### **Count 1 - Violation of SDMC section 27.4007**

17. Respondent failed to timely register as a lobbyist as required by SDMC section 27.4007. Respondent qualified as a lobbyist on November 15, 2005, but did not register until August 2, 2006, more than eight months late and approximately six months after the subject municipal decision was considered by the City Council.

#### **Count 2 - Violation of SDMC section 27.4016**

18. Respondent failed to timely file a quarterly disclosure report as required by SDMC section 27.4016. The disclosure report for the fourth quarter of 2005 was due on January 31, 2006, but Respondent did not file it until August 2, 2006, approximately six months late and approximately six months after the subject municipal decision was considered by the City Council.

### **Factors in Aggravation**

19. Respondent's failure to timely register as a lobbyist and disclose her lobbying and related activities resulted in the public and City Officials being deprived of information about

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1 compensated efforts to influence a contentious municipal decision until well after the decision  
2 was made by the City Council.

3 20. Respondent did not provide complete information on her registration form and  
4 quarterly disclosure report. By indicating that her client was a “coalition” of “concerned  
5 citizens,” and by failing to disclose that nearly all of the funding for her lobbying activities came  
6 from Mission Bay Center and Dr. Evans, she failed to provide the public and City Officials with  
7 important information regarding the identity of the persons responsible for her efforts to  
8 influence a municipal decision.

9 21. The stated purpose of the Lobbying Ordinance is to “require lobbyists to provide  
10 sufficient information so that complete disclosure of principals and clients they represent may  
11 become public information for the benefit of the City Council and the general public.”  
12 Respondent’s failure to timely register as a lobbyist and her failure to provide complete  
13 information on her registration and disclosure forms contradict the intent and purpose of the  
14 City’s lobbying laws.

15 **Factors in Mitigation**

16 22. At the time Respondent was retained by Angelucci on behalf of PBCCC in the  
17 VOA matter, she had been employed by the Seltzer Caplan law firm for approximately one  
18 week. Although there are approximately six other attorneys at this law firm who are registered  
19 as lobbyists with the City of San Diego, and although Respondent reports directly to one of these  
20 attorneys, Respondent did not receive any training or instruction regarding the City’s lobbying  
21 laws. In addition, Respondent’s prior experience as an attorney in San Diego primarily involved  
22 litigation matters and she was unaware that her transactional work and related contact with City  
23 Officials would necessitate registration as a lobbyist.

24 23. Respondent mistakenly believed that because her law firm retained a registered  
25 lobbyist (Alan Ziehaus with Southwest Strategies) to assist with the lobbying effort concerning  
26 the VOA facility, she did not have to consider whether she too would be required to register as a  
27 lobbyist and disclose her lobbying activities.

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24. As a result of the Ethics Commission investigation, the Seltzer Caplan law firm has implemented a training system whereby new attorneys will receive instruction on the City's lobbying laws.

### **Conclusion**

25. Respondent agrees to take necessary and prudent precautions to comply with all provisions of the Municipal Lobbying Ordinance in the future.

26. Respondent agrees to amend the registration forms and quarterly disclosure reports on file with the City Clerk to disclose the complete names, addresses, and telephone numbers of her clients on or before February 5, 2007.

27. Respondent agrees to pay a fine in the amount of \$5,000. This amount must be paid no later than February 5, 2007, by check or money order made payable to the City Treasurer. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order portion set forth below.

DATED: \_\_\_\_\_

STACEY FULHORST, Executive Director  
ETHICS COMMISSION, Petitioner

DATED: \_\_\_\_\_

CYNTHIA MORGAN, Respondent

### **DECISION AND ORDER**

The Ethics Commission has considered the above Stipulation at its meeting on \_\_\_\_\_, 2007. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of \$5,000.

DATED: \_\_\_\_\_

Dorothy Leonard, Chair  
SAN DIEGO ETHICS COMMISSION